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**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON**

SYBOLOGY INNOVATIONS, LLC,

Plaintiff,

v.

PROTOTEK CORPORATION,

Defendant.

Civil Action No.: 3:20-cv-05871-BHS

The Honorable Benjamin H. Settle

TRIAL BY JURY DEMANDED

**DEFENDANT'S ANSWER, DEFENSES, AND COUNTERCLAIMS TO
PLAINTIFF'S COMPLAINT FOR INFRINGEMENT OF PATENT**

Defendant Prototek Corporation ("Defendant" or "Prototek"), by its undersigned counsel, answers plaintiff Symbology Innovations, LLC's ("Plaintiff" or "Symbology") complaint for infringement of patent (the "Complaint") as follows:

I. RESPONSES TO PLAINTIFF'S ALLEGATIONS

NATURE OF THE ACTION

- 1 1. Prototek admits that the Complaint purports to set forth an action for infringement under
2 the Patent Laws of the United States, Title 35 United States Code (“U.S.C.”). Prototek
3 admits that a purported copy of U.S. Patent No. 8,424,752 (the “‘752 patent”) is attached
4 to Plaintiff’s Complaint as Exhibit A. Prototek denies that it is infringing and profiting, in
5 an illegal and unauthorized manner, and without authorization and/or consent from
6 Plaintiff, from the ‘752 patent, and, on that basis, denies any remaining allegations in
7 paragraph 1 of the Complaint.
8

9 **THE PARTIES**

- 10 2. Prototek lacks knowledge or information sufficient to form a belief about the truth of the
11 allegations in paragraph 2 of the Complaint and, on that basis, denies all such allegations.
12
- 13 3. Prototek admits the allegations in paragraph 3 of the Complaint.
- 14 4. Prototek denies that it derives a portion of its revenue from advertisements. Prototek
15 admits the remaining allegations in paragraph 4 of the Complaint.
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17 **JURISDICTION AND VENUE**

- 18 5. Prototek admits that the Complaint purports to set forth an action for infringement in
19 violation of the Patent Act of the United States, 35 U.S.C. §§1 *et seq.* For avoidance of
20 doubt, Prototek denies a violation of the Patent Act of the United States, 35 U.S.C. §§1 *et*
21 *seq.*, and denies liability for all allegations of patent infringement included or implied in
22 paragraph 5 of the Complaint.
23
- 24 6. Prototek admits the allegations in paragraph 6 of the Complaint.
- 25 7. Prototek does not contest whether personal jurisdiction over it properly lies in this
26 District in this case, and therefore admits that it has systemic and continuous contacts
27 with this jurisdiction, and that its residence is in this District. Prototek denies that it has
28

1 committed or is committing acts of infringement within this District and, on that basis,
2 denies the remaining allegations in Paragraph 7 of the Complaint.

3 8. Prototek does not contest whether this Court has specific and general personal
4 jurisdiction over it in this case, and therefore admits that has substantial business in this
5 District by regularly doing or soliciting business in the District, deriving revenue from
6 goods and services provided to individuals in this District, and being incorporated in this
7 District. Prototek denies it has committed or is committing acts of infringement within
8 this District and, on that basis, denies the remaining allegations in Paragraph 8 of the
9 Complaint.
10

11 9. Prototek admits the allegations in paragraph 9 of the Complaint.
12

13 **FACTUAL ALLEGATIONS**

14 10. Prototek admits that a purported copy of the ‘752 patent is attached to Plaintiff’s
15 Complaint as Exhibit A and that, on its face, the ‘752 patent is entitled “System and
16 method for presenting information about an object on a portable electronic device” and
17 bears an issuance date of April 23, 2013. Prototek denies that the ‘752 patent was legally
18 or duly issued. Prototek lacks knowledge or information sufficient to form a belief about
19 the truth of the remaining allegations in paragraph 10 of the Complaint and, on that basis,
20 denies all such allegations.
21

22 11. Prototek lacks knowledge or information sufficient to form a belief about the truth of the
23 allegations in paragraph 11 of the Complaint and, on that basis, denies all such
24 allegations.
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1 12. Prototek lacks knowledge or information sufficient to form a belief about the truth of the
2 allegations in paragraph 12 of the Complaint and, on that basis, denies all such
3 allegations.

4 13. Prototek lacks knowledge or information sufficient to form a belief about the truth of the
5 allegations in paragraph 13 of the Complaint and, on that basis, denies all such
6 allegations.

7 14. Prototek admits that, pursuant to the purported copy of the '752 patent that is attached to
8 Plaintiff's Complaint as Exhibit A, on its face, Claim 1 of the '752 patent is described as
9 alleged in paragraph 14 of the Complaint.

10 15. Prototek lacks knowledge or information sufficient to form a belief about the truth of the
11 allegations in paragraph 15 of the Complaint and, on that basis, denies all such
12 allegations.

13 16. Prototek lacks knowledge or information sufficient to form a belief about the truth of the
14 allegations in paragraph 16 of the Complaint and, on that basis, denies all such
15 allegations.

16 17. Prototek denies the allegations in paragraph 17 of the Complaint.

17 **DEFENDANT'S PRODUCTS**

18 18. Prototek denies the allegations in paragraph 18 of the Complaint.

19 19. Prototek denies the allegations in paragraph 19 of the Complaint.

20 20. Prototek denies the allegations in paragraph 20 of the Complaint.

21 21. Prototek denies the allegations in paragraph 21 of the Complaint.

22 22. Prototek denies the allegations in paragraph 22 of the Complaint.

23 23. Prototek denies the allegations in paragraph 23 of the Complaint.

1 24. Prototek denies the allegations in paragraph 24 of the Complaint.

2 25. Prototek denies the allegations in paragraph 25 of the Complaint.

3 26. Prototek denies the allegations in paragraph 26 of the Complaint.

4
5 **INFRINGEMENT OF THE '752 PATENT**

6 27. Prototek repeats and realleges, as if fully set forth herein, its responses to the allegations
7 in paragraphs 1 to 26 of the Complaint.

8 28. Prototek denies the allegations in paragraph 28 of the Complaint.

9 29. Prototek denies the allegations in paragraph 29 of the Complaint.

10 30. Prototek denies the allegations in paragraph 30 of the Complaint.

11 31. Prototek denies the allegations in paragraph 31 of the Complaint.

12 32. Prototek denies the allegations in paragraph 32 of the Complaint.

13 33. Prototek denies the allegations in paragraph 33 of the Complaint.

14 34. Prototek denies the allegations in paragraph 34 of the Complaint.

15 35. Prototek denies the allegations in paragraph 35 of the Complaint.

16 36. Prototek lacks knowledge or information sufficient to form a belief about the truth of the
17 allegations in paragraph 36 of the Complaint and, on that basis, denies all such
18 allegations.
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20
21 **DEMAND FOR JURY TRIAL; PRAYER FOR RELIEF**

22 37. The remainder of Plaintiff's Complaint recites a demand for jury trial and prayer for
23 relief, to which no response is required. To the extent any response is required, (i)
24 Prototek agrees with the demand for a trial by jury of any and all causes of action so
25 triable and (ii) denies that Plaintiff is entitled to any remedy or relief.
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1 38. To the extent not expressly admitted herein, Prototek denies each and every other
2 allegation, express or implied, contained in Plaintiff's Complaint.
3

4 **II. PROTOTEK'S DEFENSES**
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6 Prototek asserts the defenses listed below. Prototek reserves the right to amend its answer
7 to add additional defenses consistent with the facts discovered in this case.

8 **FIRST DEFENSE: NON-INFRINGEMENT**

9 39. Prototek does not make, use, sell, offer for sale, or import into the United States, and has
10 not made, used, sold, offered for sale or imported into the United States any products or
11 methods that infringe any valid claim of the '752 patent, either willfully, directly,
12 indirectly, contributorily, through the doctrine of equivalents, or otherwise, and has not
13 induced others to infringe the '752 patent. The '752 patent is not entitled to a scope
14 sufficient to encompass any system employed or process practiced by Prototek.
15

16 **SECOND DEFENSE: INVALIDITY**
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18 40. Each asserted claim of the '752 patent is invalid for failure to comply with one or more of
19 the requirements of the U.S.C., Title 35, including without limitation, 35 U.S.C. §§ 101,
20 102, 103, and 112, and the rules, regulations, and laws pertaining thereto. Without
21 limitation, the claims of the '752 patent are invalid under 35 U.S.C. § 101 because the
22 '752 patent claims nothing more than the abstract idea of decoding symbols, and the
23 claims recite no special computer, hardware, or other physical components. Without
24 limitation, the '752 patent is also invalid under 35 U.S.C. §§ 102 and 103 because the QR
25 code technology that is alleged to be the "Accused Product" that purportedly enables the
26 alleged infringement of the '752 patent, together with other third-party technologies
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1 enabling use of the QR code, are prior art that were invented in the 1990's and donated
2 by the inventors to the public. In view of the prior art references, the asserted claims of
3 the '752 patent are not novel and are anticipated and obvious to a person of ordinary skill
4 in the art. The foregoing is abundantly clear by the widespread public use of QR code
5 technology, and the abstract methods claimed under the '752 patent that enable its use,
6 both in the United States, and around the world.
7

8 **THIRD DEFENSE: LIMITATION ON DAMAGES**

9 41. Plaintiff's recovery for infringement is barred by the statutory limitation on damages
10 pursuant to 35 U.S.C. §286. Even if, following a trial on the merits, this honorable Court
11 were to find that an infringement of the '752 patent actually occurred by Prototek's mere
12 purchase of an advertisement in the October 2013 issue of the Municipal Sewer & Water
13 Magazine, as suggested by Plaintiff's only evidence of the alleged infringements in
14 Exhibit B of the Complaint, such alleged infringing activity, having allegedly occurred in
15 October 2013 per the date stamp of the advertisement, occurred more than six years
16 before the filing of the Complaint in August 2020, and thus any recovery in connection
17 therewith is barred by 35 U.S.C. §286. While Plaintiff alleges ongoing infringement, it
18 does not present a shred of evidence in support of its allegation.
19
20

21 **FOURTH DEFENSE: FAILURE TO STATE A CLAIM**

22 42. Plaintiff has failed to state a claim upon which relief can be granted because (i) the '752
23 patent is not entitled to a scope sufficient to encompass any system employed or process
24 practiced by Prototek, (ii) the '752 patent does not claim patentable subject matter and is
25 otherwise invalid under 35 U.S.C. §§ 101, 102, 103, and 112, and (iii) Plaintiff's
26 recovery is barred by 35 U.S.C. §286.
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2 **III. PROTOTEK'S COUNTERCLAIMS**

3 For its counterclaims against Plaintiff, Prototek alleges as follows:

4 **PARTIES**

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6 43. Prototek is a corporation organized under the laws of Washington, having a principal
7 place of business at 19044 Jensen Way NE, Poulsbo, Washington 98370.

8 44. Upon information and belief based solely on paragraph 2 of the Complaint, Symbology is
9 a Texas limited liability company with its principal place of business at 1801 NE 123
10 Street, North Miami, Florida 33181.

11 **JURISDICTION**

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13 45. Prototek incorporates by reference paragraphs 43 and 44 above.

14 46. These counterclaims arise under the patent laws of the United States, Title 35, United
15 States Code. The jurisdiction of this Court is proper under at least 35 U.S.C. § 271 *et*
16 *seq.*, and 28 U.S.C. §§ 1331, 1338, 1367, and 2201–02.

17
18 47. Symbology has consented to the personal jurisdiction of this Court at least by
19 commencing its action for patent infringement in this District, as set forth in its
20 Complaint.

21 48. Based solely on Symbology's filing of this action, venue is proper in this District
22 pursuant to at least 28 U.S.C. § 1400.

23 **COUNT I – DECLARATION REGARDING NON-INFRINGEMENT**

24
25 49. Prototek incorporates by reference paragraphs 43 - 48 above.

1 50. Based on Symbology's filing of this action and at least Prototek's first affirmative
2 defense of non-infringement, an actual controversy has arisen and now exists between the
3 parties as to whether Prototek infringes the '752 patent.

4
5 51. Prototek does not infringe the '752 patent because Prototek does not make, use, sell, offer
6 for sale, or import into the United States, and has not made, used, sold, offered for sale or
7 imported into the United States any products or methods that infringe any valid claim of
8 the '752 patent, either willfully, directly, indirectly, contributorily, through the doctrine of
9 equivalents, or otherwise, and has not induced others to infringe the '752 patent. The
10 '752 patent is not entitled to a scope sufficient to encompass any system employed or
11 process practiced by Prototek.

12
13 52. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §2201 *et seq.*, Prototek
14 requests a declaration by the Court that Prototek has not infringed and does not infringe
15 any claim of the '752 patent under any theory (including directly (whether individually or
16 jointly) or indirectly (whether contributorily or by inducement)).

17
18 **COUNT II – DECLARATION REGARDING INVALIDITY**

19 53. Prototek incorporates by reference paragraphs 43 - 52 above.

20 54. Based on Symbology's filing of this action and at least Prototek's second affirmative
21 defense of invalidity, an actual controversy has arisen and now exists between the parties
22 as to the validity of the claims of the '752 patent.

23
24 55. The asserted claims of the '752 patent do not claim patentable subject matter and are
25 anticipated and/or rendered obvious by prior art donated by their inventors to the public
26 more than two decades ago, rendering the claims of the '752 patent invalid under at least
27 35 U.S.C. §§ 101, 102, and 103. Without limitation, the claims of the '752 patent are
28

1 invalid under 35 U.S.C. § 101 because the ‘752 patent claims nothing more than the
2 abstract idea of decoding symbols, and the claims recite no special computer, hardware,
3 or other physical components. Without limitation, the ‘752 patent is also invalid under 35
4 U.S.C. §§ 102 and 103 because the QR code technology that is alleged to be the
5 “Accused Product” that purportedly enables the alleged infringement of the ‘752 patent,
6 together with other third-party technologies enabling use of the QR code, are prior art
7 that were invented in the 1990’s and donated by the inventors to the public. In view of the
8 prior art references, the asserted claims of the ‘752 patent are not novel and are
9 anticipated and obvious to a person of ordinary skill in the art. The foregoing is
10 abundantly clear by the widespread public use of QR code technology, and the abstract
11 methods claimed under the ‘752 patent that enable its use, both in the United States, and
12 around the world.

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14
15 56. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §2201 et seq., Prototek
16 requests a declaration by the Court that claims of the ‘752 patent are invalid for failure to
17 comply with one or more of the requirements of United States Code, Title 35, including
18 without limitation, 35 U.S.C. §§ 101, 102, 103, and 112, and the rules, regulations, and
19 laws pertaining thereto.
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22 **IV. DEMAND FOR JURY TRIAL**

23 57. Prototek demands a trial by jury of any and all causes of action so triable.
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26 **V. PRAYER FOR RELIEF**
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1 WHEREFORE, Prototek respectfully requests that the Court enter judgment in Prototek's
2 favor and against Symbology by granting the following relief:

3 A. a declaration that the '752 patent is invalid.

4 B. a declaration that Prototek does not infringe, under any theory, any valid claim of the
5 '752 patent.
6

7 C. judgment against Symbology and in favor of Prototek.

8 D. dismissal of the Complaint with prejudice.

9 E. a finding that this case is an exceptional case under 35 U.S.C. § 285 and an award to
10 Prototek of its costs and attorneys' fees incurred in this action.
11

12 F. further relief as the Court may deem just and proper.
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14
15 Dated: October 2, 2020
16 Seattle, WA

Respectfully submitted,
Carpenter Wellington PLLC

17 s/Mario V. Glisic,
18 Mario V. Glisic, Esq.
19 WSBA No. 46444
20 Attorney for Defendant
21 Prototek Corporation
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